

AMENDED IN ASSEMBLY JUNE 28, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 20, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 801

Introduced by Senator Simitian

February 22, 2005

An act to amend Sections ~~6476~~ 6478, 6592, 6592.5, and 6701 of, and to add Sections 6452.2 and ~~6471.1~~, 6471.1, 6476.1, and 6477.1 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 801, as amended, Simitian. Sales and use taxes: prepayments: returns.

The Sales and Use Tax Law, which is administered by the State Board of Equalization, imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law generally requires a sales and use tax return, with a remittance of the taxes owed, to be filed with the board on a quarterly basis. That law provides that, under specified circumstances, the board may require any person whose sales and use tax liability exceeds a specified amount to prepay that tax liability.

This bill would authorize a person that has only one retail location in this state that generates an estimated monthly tax liability of less than \$4,000 to file a sales and use tax return on a yearly basis and to make quarterly prepayments, upon approval by the board, as specified. Additionally, this bill would provide that the board may, by written

notice, require a retailer to file quarterly returns in lieu of filing prepayments and yearly returns, as specified.

Existing law provides that a person required to make a prepayment and who fails to do so is subject to a penalty. *Existing law also provides for an increased penalty, under specified conditions, for the failure to make a prepayment.*

This bill would extend the penalty application, *and the application of an increased penalty under specified conditions*, to retailers required to file a sales and use tax return on a yearly basis that are also required to make quarterly prepayments.

Existing law provides that the State Board of Equalization may relieve the application of a penalty for failure to make a timely return or payment, as specified.

This bill would extend that relief to retailers required to file a sale and use tax return on a yearly basis that are also required to make quarterly prepayments.

The Sales and Use Tax Law authorizes the State Board of Equalization to require taxpayers to post security whenever the board deems it necessary to insure payment of taxes due, according to specific formulas.

This bill would allow the board to include the estimated liability of persons required to make quarterly prepayments when determining the security amount that is required to be posted.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6452.2 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6452.2. (a) Notwithstanding Section 6451 or 6452, a retailer
- 4 described in Section 6471.1 shall, no later than one month
- 5 following the close of each calendar year, file a return for that
- 6 calendar year with the board in the form as prescribed by the
- 7 board. Returns shall be authenticated in a form or pursuant to
- 8 methods as may be prescribed by the board.
- 9 (b) For purposes of the sales tax, a return shall be filed by
- 10 every retailer that is liable for the sales tax under this part. For
- 11 purposes of the use tax, a return shall be filed by every retailer

1 engaged in business in this state that has not paid the use tax due
2 to a retailer required to collect the tax.

3 (c) Any retailer who fails or refuses to furnish any return
4 required to be made, or who fails or refuses to furnish a
5 supplemental return or other data required by the board, is guilty
6 of a misdemeanor punishable as provided in Section 7153.

7 SEC. 2. Section 6471.1 is added to the Revenue and Taxation
8 Code, to read:

9 6471.1. (a) Notwithstanding Section 6451 or 6470, a retailer
10 described in subdivision (b) that was engaged in the same
11 business during the entire preceding calendar year, or a person
12 who is a successor to a business that was in operation during the
13 entire preceding calendar year, shall make a prepayment each
14 quarter for the taxes imposed by this part on or before the last
15 day of the month following the close of each calendar quarter.
16 The prepayments for each quarterly period shall be in an amount
17 equal to the amount of gross receipts that were subject to the
18 taxes imposed by this part for that same calendar quarter in the
19 prior calendar year multiplied by the state and local tax rate in
20 effect during the calendar quarter for which the prepayment is
21 made or shall be in an amount equal to the state and local tax
22 liability for the quarterly period for which the prepayment is due.

23 (b) Subdivision (a) shall apply to a retailer that meets all of the
24 following conditions:

25 (1) The retailer submits a written request to the board to allow
26 the retailer to make prepayments in accordance with this section
27 and file returns pursuant to Section 6452.2.

28 (2) The board approves the retailer's request and issues a
29 written notification to that retailer.

30 (3) The retailer's estimated measure of *tax* liability under this
31 part averages not less than one thousand four hundred dollars
32 (\$1,400) and not more than four thousand dollars (\$4,000) per
33 month.

34 (4) The retailer has only one business location in this state
35 that is engaged in making retail sales of tangible personal
36 property.

37 (c) A retailer described in subdivision (b) that is authorized to
38 make prepayments pursuant to this section shall continue to make
39 those prepayments and file a return as required under Section
40 6452.2 until notified otherwise by the board.

(d) This section shall not apply to any person required to make prepayments pursuant to Article 1.5 (commencing with Section 6480) or to any other person for which the board determines that the retailer's remittance of prepayments pursuant to this section would not be in the best interests of the state.

(e) When the board determines it is necessary for the efficient administration of this part, the board may, by written notice, require any retailer, in lieu of filing prepayments in accordance with this section and filing a return pursuant to Section 6452.2, to file quarterly returns pursuant to Section 6452.

~~SEC. 3. Section 6476 of the Revenue and Taxation Code is amended to read:~~

~~6476. Any person required to make a prepayment pursuant to Section 6471 or Section 6471.1 who fails to make a timely prepayment but makes such prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due, shall also pay a penalty of 6 percent of the amount of prepayment.~~

SEC. 3. Section 6476.1 is added to the Revenue and Taxation Code, to read:

6476.1. Any person required to make a prepayment pursuant to Section 6471.1 who fails to make a timely prepayment but makes such prepayment before the last day of the monthly period following the calendar year period in which the prepayment became due, shall also pay a penalty of 6 percent of the amount of prepayment.

SEC. 4. Section 6477.1 is added to the Revenue and Taxation Code, to read:

6477.1. Any person required to make a prepayment pursuant to Section 6471.1 who fails to make a prepayment before the last day of the monthly period following the calendar year period in which the prepayment became due and who files a timely return and payment for the calendar year period in which the prepayment became due shall pay a penalty of 6 percent of the prepayment amount prescribed in Section 6471.1 for each of the periods during that calendar year period for which a required prepayment was not made.

SEC. 5. Section 6478 of the Revenue and Taxation Code is amended to read:

6478. (a) If a failure to make a prepayment as described in Section 6477 or 6477.1 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 6484, 6485, 6511, 6514, and 6591.

SEC. 6. Section 6592 of the Revenue and Taxation Code is amended to read:

6592. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the penalties provided by Sections 6476, 6476.1, 6477, 6477.1, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

(b) Except as provided in subdivision (c) any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

SEC. 7. Section 6592.5 of the Revenue and Taxation Code is amended to read:

6592.5. Any person who is granted relief from the penalty imposed by Section 6476, 6476.1, ~~or~~ 6477, or 6477.1 shall pay, in addition to any prepayment, interest at the "modified adjusted rate per month, or fraction thereof" established pursuant to subdivision (b) of Section 6591.5, from the date on which the prepayment would have been due until the date of payment.

~~SEC. 4.—~~

SEC. 8. Section 6701 of the Revenue and Taxation Code is amended to read:

6701. The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject thereto, to place with it any security that the board may

1 determine. Any security in the form of cash, government bonds,
2 or insured deposits in banks or savings and loan institutions shall
3 be held by the board in trust to be used solely in the manner
4 provided by this section and Section 6815. The amount of the
5 security shall be fixed by the board but, except as noted below,
6 shall not be greater than twice the estimated average liability of
7 persons filing returns for quarterly periods or three times the
8 estimated average liability of persons required to file returns for
9 monthly periods or the estimated liability of persons required to
10 file returns for calendar year periods and make quarterly
11 prepayments, determined in the manner that the board deems
12 proper, or fifty thousand dollars (\$50,000), whichever amount is
13 the lesser. In case of a person who, pursuant to Section 6070 of
14 this part, has been given notice of hearing to show cause why his
15 or her permit or permits should not be revoked, or a person
16 whose permit or permits has been revoked or suspended, the
17 amount of the security shall not be greater than three times the
18 average liability of persons filing returns for quarterly periods or
19 five times the average liability of persons required to file returns
20 for monthly periods or twice the estimated liability of persons
21 required to file calendar year returns and make quarterly
22 prepayments, or fifty thousand dollars (\$50,000), whichever
23 amount is the lesser. The limitations herein provided apply
24 regardless of the type of security placed with the board. The
25 amount of the security may be increased or decreased by the
26 board subject to the limitations herein provided. Security held by
27 the board shall be released after a three-year period in which the
28 person has filed all returns and paid all tax to the state or any
29 amount of tax required to be collected and paid to the state within
30 the time required. The board may sell the security at public
31 auction if it becomes necessary to do so in order to recover any
32 tax or any amount required to be collected, interest, or penalty
33 due. Notice of the sale may be served upon the person who
34 placed the security personally or by mail; if by mail, service shall
35 be made in the manner prescribed for service of a notice of a
36 deficiency determination and shall be addressed to the person at
37 his or her address as it appears in the records of the board. Upon

- 1 any sale any surplus above the amounts due shall be returned to
- 2 the person who placed the security.

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